

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 02-2630

United States of America,

Appellee,

v.

Mariano Valles-Herrera,

Appellant.

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Appeal from the United States
District Court for the District
of Nebraska.

[UNPUBLISHED]

Submitted: December 30, 2002

Filed: January 10, 2003

Before McMILLIAN, FAGG, and BOWMAN, Circuit Judges.

PER CURIAM.

Mariano Valles-Herrera pleaded guilty to conspiring to distribute and to possess with intent to distribute a mixture or substance containing 500 grams or more of methamphetamine, in violation of 21 U.S.C. § 846, and he was sentenced to 168 months imprisonment and five years supervised release. On appeal, Valles-Herrera argues the district court* erroneously imposed a two-level enhancement under U.S.S.G. § 2D1.1(b)(1) for possessing a firearm during the commission of the

*The Honorable Richard G. Kopf, Chief Judge, United States District Court for the District of Nebraska.

offense. We disagree. The district court was presented with evidence Valles-Herrera lived in the residence in which the firearm was found, see United States v. Boykin, 986 F.2d 270, 274 (8th Cir.), cert. denied, 510 U.S. 888 (1993), and the firearm was in plain sight in the living room, making it accessible to protect the drugs, drug paraphernalia, and drug money also found in the residence, see U.S.S.G. § 2D1.1, comment. (n.3); United States v. Macklin, 104 F.3d 1046, 1048 (8th Cir.), cert. denied, 522 U.S. 891 (1997).

We thus affirm Valles-Herrera's sentence.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.